

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KIMBERLY A. BIVENS,

Defendant.

8:12CR177

ORDER

This matter is before the court on the Petition for Action on Conditions of Pretrial Release (Petition) regarding defendant Kimberly A. Bivens (Bivens) (Filing No. 26). Bivens was ordered released upon conditions pending further proceedings on June 13, 2012 (Filing No. 7). Bivens was to reside in Omaha, Nebraska, and abide by other conditions of release. On September 10, 2012, Pretrial Services Officer Assistant Theresa Rerucha submitted a Petition alleging Bivens had violated the conditions of her release by committing an offense of destruction of property. A warrant for Bivens's arrest was issued.

Bivens appeared before Magistrate Judge F.A. Gossett on September 21, 2012. She was represented by Brandie M. Fowler and the United States was represented by Assistant U.S. Attorney Frederick D. Franklin. After being advised of the nature of the allegations, her rights, and the consequences if the allegations were found to be true, Bivens admitted the allegations. The court found the allegations of the petition generally true and Bivens had violated the conditions of her release.

The issue of detention was scheduled before the undersigned magistrate judge. Bivens appeared before the court on September 26, 2012. She was represented by Ms. Fowler and the United States was represented by Assistant U.S. Attorney John E. Higgins. The court took judicial notice of the Pretrial Services Violation Report (Filing No. 34) together with the Addendum (Filing No. 39). I find the Orders Setting Conditions of Release should be revoked. Bivens has demonstrated she is unable to comply with rules of her release. The defendant has been given many opportunities in the past to commit to drug rehabilitation and has either failed to do so or declined to do so. While she expresses a desire for treatment at the Stephen Center and has been accepted for treatment, the court finds she should be detained pending her sentencing.

IT IS ORDERED:

1. The Petition For Action on Conditions of Pretrial Release (Filing No. 26) is granted.
2. The Order Setting Conditions of Release of Kimberly A. Bivens (Filing No. 7) is hereby revoked.
3. The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent

practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

DATED this 26th day of September, 2012.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge